Tan Leong Wei & Ors v Omar bin Ahmad

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 12–380 OF 2002
KAMALANATHAN RATNAM J
18 AUGUST 2004

Tort — Road accident — Negligence — Liability — Apportionment of liability — Damages — Multiplier — Reduction of — Whether justified

The deceased, whilst riding his motorcycle, was involved in a road accident involving a motorcar driven by the first defendant, and a bus driven by the third defendant. The sessions court found the first defendant 70% liable and the third defendant 30% liable. The latter appealed against the finding of liability found against him. The deceased cross-appealed against the award of damages made.

Held, allowing the appeal and dismissing the cross-appeal:

(1) The first defendant was totally liable. After the deceased was collided into from the rear by the first defendant, he was flung onto the path of the oncoming bus driver. From the evidence, there was no liability against the third defendant (see para 4).

(2) Following the distinction drawn by the Supreme Court in *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233, ie between the words 'loss of support' as stated in s 7(3) and 'loss of earnings' as stated in s 7(3)(iv)(d) of the Civil Law Act 1956, this court upheld the award of RM300 per month for 10 years made to the deceased's father (see para 10).

[**Bahasa Malaysia summary**

Si mati, semasa menunggang motosikalnya, terlibat dengan satu kemalangan jalan raya yang melibatkan sebuah kereta yang dipandu oleh defendan pertama dan sebuah bas yang dipandu oleh defendan ketiga. Mahkamah sesyen memutuskan yang defendan pertama bertanggungjawab 70% dan defendan ketiga bertanggungjawab 30%. Defendan ketiga merayu terhadap keputusan yang dibuat terhadapnya mengenai liabiliti. Si mati membuat rayuan balas terhadap award ganti rugi yang dibuat.

Diputuskan, membenarkan rayuan dan menolak rayuan balas:

(1) Defendan pertama bertanggungjawab sepenuhnya. Selepas si mati dilanggar dari belakang oleh defendan pertama, beliau terjatuh ke laluan pemandu bas yang sedang mara. Daripada keterangan, tidak terdapat liabiliti terhadap defendan ketiga (lihat perenggan 4).

(2) Mengikut perbezaan yang dibuat oleh Mahkamah Agung di dalam *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233, iaitu di antara perkataan-perkataan 'kehilangan saraan' sebagaimana yang diperuntukkan di dalam s 7(3) dan 'kehilangan pendapatan' sebagaimana yang diperuntukkan di s 7(3)(iv)(d) Akta Undang-Undang Sivil 1956, mahkamah ini mengesahkan award RM300 sebulan selama 10 tahun dibuat kepada ayah si mati (lihat perenggan 10).]

Notes

For cases on road accident, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 887–1108.

Cases referred to

Chan Chin Ming & Anor v Lim Yok Eng [1994] 3 MLJ 233 (folld)
Teow Teik Chai & Anor v Muhamad bin Hashim, Rayuan Sivil No P-04-95 Tahun 1995 (refd)

Legislation referred to

Civil Law Act 1956 s 7(3), (iv)(d)

DP Rajah (Rajah & Co) for the respondent/plaintiff.
Veerasamy Rajendran (Dass, Jainab & Assoc) for first and second appellants/defendants.
P Ramanathan (VP Nathan & Partners) for third and fourth appellants/defendants.

Kamalanathan Ratnam J:

FACTS

[1] On 26 December 1999 at about 6.20pm the deceased was riding his motorcycle along Jalan Dato' Ismail Hashim, Pulau Pinang and proceeding from the direction of Sungai Ara towards the direction of Relau. At the same time a motorcar driven by the first defendant and owned by the second defendant was proceeding in the same direction as the deceased motorcyclist and from the deceased's rear. At the same time too, a motorbus was being driven by the third defendant and owned by the fourth defendant was proceeding from the opposite direction.

[2] The deceased's father sued as a dependent. The plaintiff having no eye-witness to the accident relied on the evidence of the first defendant and his police report. The plaintiff established through the investigating officer that there was a break in the road leading towards Relau and that there was a junction on the right as one faces Relau leading to Taman Tunas Muda. The investigating officer testified that at the break there were double lines indicating that a motorist intending to turn into Taman Tunas Muda and cross the other

half of the road, must stop for through traffic. The investigating officer also testified that the deceased's motorcycle was damaged at the rear with its rear body part being pushed inwards. On the other hand the motorcar's front right head light was broken with its front bumper and mudguard dented. There were no damages to the bus.

[3] Having heard the evidence the sessions court found the first defendant 70% liable and the bus driver namely the third defendant 30% liable. This is an appeal by the bus driver against the finding of 30% liability against him.

FINDINGS OF THIS COURT

[4] Having heard submissions I allowed the appeal and found the defendant totally liable. After the deceased was collided into from the rear by the first defendant, he was flung onto the path of the oncoming bus driver. I found that from the evidence, there was no liability against him. So far there is no appeal filed against this decision. I also directed that the driver of the said motorcar be prosecuted for dangerous driving based on the evidence before this court.

CROSS-APPEAL

[5] The deceased cross-appealed against the award of damages. I heard submissions and dismissed the cross-appeal. Dissatisfied with my decision the deceased then filed a notice of appeal to the Court of Appeal.

[6] The deceased was 21 years, unmarried and was selling burgers at a stall. The owner of the stall testified that he paid the deceased RM30 per day and that he received RM900 per month. There was however no documentary evidence to support this. At least the employer could have produced receipts of bulk purchases of raw burgers and onions and buns to show how much he was earning. If he was paying the deceased RM900 it must mean that his income must have exceeded this.

[7] Further, the employer had no licence to sell burgers and the deceased knew this.

[8] The father testified that out of a sum of RM900 the deceased used to give him RM600 per month. Based on this, Mr Rajah for the deceased submitted for 16 years at RM600 per month. The defence contended that since the earnings were from an unlicensed source the court should make no award. However in the alternative, the defence submitted RM200 for 10 years.

[9] The court awarded RM300 per month for 10 years. Dissatisfied with that decision, Mr Rajah cross-appealed.

[10] In *Chan Chin Ming & Anor* v *Lim Yok Eng* [1994] 3 MLJ 233 the then Supreme Court admirably dealt with the issue as to why the courts can reduce

the multiplier from 16 to a figure it felt was reasonable and appropriate. The court drew an excellent distinction between the words 'loss of support' as stated in s 7(3) and 'loss of earnings' as stated in s 7(3)(iv)(d) of the Civil Law Act 1956. This same view was accepted by Mokhtar Sidin JCA in the unreported decision in *Teow Teik Chai & Anor v Muhamad bin Hashim, Dalam Mahkamah Rayuan Malaysia Di Kuala Lumpur (Bidangkuasa Rayuan)* Rayuan Sivil No P-04-95 Tahun 1995 where the Court of Appeal upheld the High Court's decision in allowing a multiplier of eight years for a 24 year old bachelor for the support of his father.

[11] I am aware that of late another panel of the Court of Appeal has refused to follow the decision of the Supreme Court in *Chan Chin Ming*. I am a conservative. I am bound by the ruling of the Supreme Court. I therefore dismissed this cross-appeal of the plaintiff with costs as I found no reason to interfere with the discretion exercised by the judge of the sessions court.

Plaintiff's cross appeal dismissed. Third defendant's appeal allowed.

Reported by AG Kalidas